



# **City of DeSoto**

## **PURCHASING POLICIES**

**AND**

## **PROCEDURES**

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## PART I

### GLOSSARY OF TERMS

The following definitions are intended to assist you in understanding the language used throughout this manual. When using this manual, if you find a word or words that you may not clearly understand or if it is not defined in this section, please do not hesitate to contact someone in the Purchasing Department for clarification and/or interpretation.

**Annual contract** - Contracts protect pricing for a period of one year and are awarded to vendors for supplies, equipment and services routinely required by one or more departments.

**Award** – The presentation, after careful consideration, of a purchase agreement or contract to the selected bidder.

- **Best value** - If the sealed competitive bidding requirement applies to the contract for goods or services, the contract may be awarded to the lowest responsible bidder or to the bidder who provides the goods or services at the best value for the City. In determining the best value for the City, we may consider:
  - the purchase price;
  - the reputation of the bidder and of the bidder's goods or services;
  - the quality of the bidder's goods or services;
  - the extent to which the goods or services meet the City's needs;
  - the bidder's past relationship with the City;
  - the impact on the ability of the City to comply with laws and rules relating to contracting with historically underutilized businesses and non-profit organizations employing persons with disabilities;
  - the total long-term cost to the City to acquire the bidder's goods or services, and
  - any relevant criteria specifically listed in the request for bids or proposals.

**Bid advertisement** - For expenditures over \$50,000 a public notice shall be placed in a newspaper of general circulation and published at least once a week for two consecutive weeks. The notice shall contain the time and place at which bids will be publicly opened.

#### Bonds

**Bid bond** – A bond required of a contractor to ensure that the contractor will enter into the contract, for which he has submitted a formal written bid and/or proposal.

**Payment bond** – A bond required that ensures that all suppliers and subcontractors of the contractor will be paid for work and/or material supplied in the course of the contract.

**Performance bond** – A bond required that guarantees vendor performance during the execution of the contract.

**Capital equipment** – Assets that are used in operations with a useful life greater than one year and valued at \$5,000 or more at the time of acquisition.

**Change order** – A change order is issued to a purchase order or contract if changes in plans or specifications are necessary in order to increase or decrease the quantity of work to be performed or of materials, equipment, or supplies to be furnished. Change orders must not be issued unless funds are available for the increase and the original contract may not be increased by more than 25 percent. The contract may not be decreased by more than 25% without the consent of the contractor.

**City Council** - The elected officials of the City of DeSoto, Texas given the authority to exercise such powers and jurisdiction of all City business as conferred by the City Charter and the State of Texas Constitution and Laws.

**Commodity code** - A specific group of goods or services categorized into distinct classes that have been assigned a numerical reference number within the purchasing and inventory system.

**Competitive bidding** - The process wherein a vendor openly competes with other vendors, through a formal or informal process, for the City's business.

**Component purchases** - Purchases of component parts of an item, which in normal purchasing practices would be purchased in one purchase.

**Consulting services** - The service of studying or advising the City under a contract that does not involve the traditional relationship of employer and employee.

**Contract** - An agreement between the City and a Supplier, with binding legal and moral force, usually exchanging goods or services for money or other consideration.

**Contractor** - The successful vendor(s) awarded a contract by the City of DeSoto.

**Delivery date** - The date by which goods or services are needed by the department or are promised by the vendor.

**Emergency** - Purchases that are made to meet a critical, unforeseen need of the City, where the City's ability to serve the public would be impaired if the purchase is not made immediately. Emergency purchases are exempt from standard purchasing procedures and must qualify for exemption as outlined in LGC 252.022. Emergency purchases must follow the procedure set forth in this manual.

**Encumbrance** – Commitments related to unperformed contracts for goods or services.

**Expedite** - To accelerate the purchasing process through normal procedures in order to prevent work stoppage or loss of city equipment or property.

**Goods** - A generic term that includes all types of property to be purchased by the City; equipment, supplies, materials, component and repair parts.

**Interlocal agreement** – An agreement made between two governmental entities to perform governmental functions and services (such as purchasing, records management, police /fire protection, public health, etc.) for another as provided under Government Code Chapter 791.025.

**Invitation to bid** - This is a formal written document that requests from bidders a firm price and delivery details for specified goods or services. An invitation to bid is always required when the anticipated level of expenditure will be greater than \$50,000. It may be used any time the Purchasing Manager, the Department, or the City Manager deems it is justified.

**Lowest responsible bidder** - This is the vendor who offers the lowest bid, which meets all the specifications, requirements, and terms and conditions of the invitation to bid. It is expressly understood that the lowest responsible bid includes any related costs to the City, using a total cost concept. The term “responsible” refers to the financial and practical ability of the bidder to perform the contract. The term is also used to refer to the experience or safety record of the vendor.

**Maintenance agreements** – An agreement with equipment manufacturers or authorized service centers for the upkeep of equipment that neither adds to its permanent value nor prolongs its intended life appreciably, but instead keeps it in an efficient operating condition.

**Professional services** - Services rendered by members of a recognized profession or possessing a special skill. Such services are generally acquired to obtain information, advice, training, or direct assistance. (Mental or intellectual skills, rather than physical or manual)

**Purchase** - An act that includes the acquisition of goods or services, to include the act of leasing personal or real property. Separate, sequential, and component purchases shall be treated as a single purchase.

**Purchase order** - A purchaser’s written document to a vendor formalizing all of the terms and conditions of a proposed transaction, such as a description of the requested item(s), delivery schedule, terms of payment, and transportation. When accepted by a vendor, the agreement specified in the purchase order becomes a contract. A purchase order grants the vendor the authority to deliver the goods or services and invoice for the same. It is the City’s commitment to accept the goods or services and pay for them at the agreed price.

**Request for proposal** - A formal written document requesting that potential vendors make an offer for goods or services to the City. The request for proposal method of procurement may be used for all goods and services. RFP’s differ from invitations to bid in that the City is seeking a solution, as described in the document, not a bid/quotation meeting firm specifications for the lowest price. Proposals are evaluated based on criteria formulated around the most important features of a product or service, of which quality, testing, references, availability or capability may be overriding factors, and price is not the sole factor of the award. All request for proposals are kept secret during negotiations until a contract is awarded.

**Request for qualifications** - A formal written document used when soliciting providers of architectural, engineering or land surveying services. The City must comply with Government Code 2254.004 in the procurement of these services. The City must first select the most highly qualified

provider of those services on the basis of demonstrated competence and qualifications. After a firm has been selected based on qualifications and experience, then a fair and reasonable fee shall be negotiated. If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the City shall formally end negotiations with that firm and select the next most highly qualified firm and begin negotiations with that provider for a fair and reasonable price.

**Requisition** - The source document for all purchasing activity. This form communicates a department's needs to the Purchasing Department and grants authorization to enter into a contractual relationship for delivery of the goods and/or services. A requisition is for communicating internal requirements and should not be used by the departments for the order and delivery of goods and/or services.

**Separate purchases** - Purchases made separately of items that in normal purchasing practices would be purchased in one purchase.

**Sequential purchases** – Purchases, made over a period of time, of items that in normal purchasing practices would be purchased in one purchase.

**Services** - A generic term to include all work or labor performed for the City on an independent contractor basis, including maintenance, construction, manual, clerical or professional services.

**Sole source procurement** - Purchases of goods or services that are available from only one supplier. There may be just one vendor because of patents or copyrights, or simply because the vendor is the only one that supplies the good or service. These purchases are exempt from the standard bidding requirement and must qualify as outlined in LGC 252.022 but must comply with the procedures outlined in this manual.

**Specifications** – A description of the physical or functional characteristics, or of the nature of a supply, service, or construction item; the requirements to be satisfied by a product, material or process indicating, if appropriate, the procedures to determine whether the requirements are satisfied. Specifications should be descriptive, but not restrictive.

**State contract purchase** – Items that are available through the State of Texas Procurement and Support Services Cooperative Purchasing Program. The State has publicly advertised and received qualified bids for specific items. These appear on a listing periodically published by the State. The City of DeSoto has elected to participate in the cooperative purchasing program for governmental subdivisions and other state agencies.

**Surplus** - Item(s) no longer needed by a department, regardless of its value or condition.

**Vendor** - A generic term applied to individuals and companies alike, who provide goods and services to the City.

## PART II

### THE MISSION AND PURPOSE OF PURCHASING

#### A. Introduction

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The role of Public Purchasing in city government is to assure the purchase of goods and services for the best value. Sound purchasing guidelines contribute greatly to the economical and effective operation of the city and provide public confidence and trust in government.

The mission of the City of DeSoto's (City) Purchasing Division is to procure quality goods and services necessary to provide the citizens with the services they expect at the best possible price within the guidelines of all applicable Federal, State, and Municipal purchasing laws.

The goals of the City's Purchasing Division include the following:

- purchasing quality goods and services;
- obtain the best possible price for goods and services;
- encourage and promote interlocal cooperation among area agencies;
- accept delivery of goods and services when and where needed;
- assure a continuing supply of needed goods and services;
- guard against misappropriation of any assets procured;
- responsible bidders are given a fair opportunity to compete for the City's business;
- public funds are safeguarded. Although the purchasing division does not usually designate the types of purchases to be made, it should see that the best value is received of the public dollar.

#### B. Purpose

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The purpose of this policy is to establish standard practices and procedures to create an efficient and effective purchasing program for the City of DeSoto. This manual has been prepared to serve as a guide for those employees granted purchasing privileges in the name of the City of DeSoto. Detailed explanations of each department's responsibility and role in the procurement function are offered in this manual, as well as an overall summary of the entire purchasing process.

The Purchasing Policies and Procedures (PPP), as established and approved by the City Manager, shall be a complete source of purchasing information and procedures for purchasing of all commodities, contractual services, and equipment.

The guidelines set forth are for all personnel who participate in the actions and decisions relating to procurement, and strives to give a complete understanding of purchasing policies, procedures, and practices. Interpretation of the procedures outlined in this manual is the responsibility of the Purchasing Manager, subject to the guidance and supervision of the Director of Financial Services and the City Manager. This manual is effective immediately upon issuance and supersedes all previously issued purchasing manuals, instructions or directives.

This manual cannot address every situation. When an unusual situation occurs or a difficult legal problem arises, the City Manager may approve exceptions to this Policy when in the best interests of the City, so long as the proposed exceptions are consistent with the local, state, and federal law. The *final* authority for City purchasing procedures is the law itself. All City of DeSoto employees must familiarize themselves with the regulations set forth and shall adhere to the procedures and practices established herein under normal circumstances.

### **C. Purchasing Responsibilities**

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The City wants to promote and protect its governmental integrity. Public employees must, therefore, discharge their duties impartially to assure fair, competitive access to City procurement. Moreover, the City's officers, directors, and employees shall conduct themselves in a way that fosters public confidence in the integrity of the City.

The employees of the City responsible for purchasing should:

1. purchase the proper goods or services to suit the City's need;
2. get the best possible price for the goods or services;
3. have the goods or services available when and where the City needs it;
4. assure a continuing supply of needed goods and services;
5. guard against misappropriation of City funds;
6. facilitate cooperation with other governmental units;
7. maximize competition from responsible bidders;
8. safeguard public funds and receive the best value for the public dollar;
9. refrain from use of public spending to enrich elected officials or City employees;
10. and refrain from making purchases for personal use in the City's name.

## PART III

### DUTIES AND RESPONSIBILITIES

#### A. City Manager Role

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The ultimate responsibility for all purchases for the City of DeSoto is held by the City Manager. The City Manager shall establish the rules and regulations for the purchase and procurement of all goods and services, which shall be followed by all City employees.

The City Manager possesses the sole authority for any deviation from purchasing regulations. If improper purchasing practices or discretion may happen to appear, the City Manager may invoke disciplinary actions upon the individual, division, and/or department. Disciplinary action may be in the form of restricted purchasing privileges, restitution, suspension, termination, or any other action deemed appropriate by the City Manager.

#### B. Purchasing Manager Role

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The Purchasing Manager is responsible for procurement of goods and services obtained by means of competitive sealed bids, competitive sealed proposals and request for quotes, price agreements, state contract, inter-local agreements. The Purchasing Manager is also responsible for the following:

1. Ensuring statutory compliance by the City with all applicable laws and regulations.
2. Ensuring City departments receive prompt delivery of goods and services requested through annual contracts, inter-local agreements, request for quotes, state contracts, or price agreements.
3. Developing and maintaining reliable alternate sources of supply and a competitive atmosphere in pricing and performance by vendors.
4. Selecting sources of supply from which to secure goods and services, obtaining quotes, and documenting reasons for the selection of a given vendor.
5. Contacting and documenting a supplier in regard to poor performance. Unsatisfactory product quality or service performance can be a factor in subsequent award determinations.
6. Assist departments in planning purchases for submission in the annual budget process.
7. Where possible and practical, may combine purchases of similar items to allow for better pricing and establish a more competitive atmosphere.
8. Coordinates purchasing procedures with various City departments.
9. Insure specifications written by departments are not proprietary. In the event a bid response is anticipated to be very narrow, insure proper documentation exists as to reasoning of narrow specifications or may decide to rebid the purchase request.
10. Conduct departmental audits and issue any subsequent reports to insure all statutes, policies and procedures are being adhered to.
11. Expedites goods and services in normal and emergency situations by utilizing known cooperative purchasing contracts, vendor contacts and services.
12. Join with other governmental agencies in cooperative purchasing plans when it is in the best interest of the City.

13. Purchasing Department will provide purchasing guidance and training to each City department. Purchasing will ensure timely distribution of any revisions to the PPP.

### **C. Department Director-Manager**

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Department directors are given the responsibility of ensuring that all personnel in their department are knowledgeable of and fully understand purchasing procedures established by the PPP. By following the requirements established within the PPP, department directors will assist the Purchasing Division by giving sufficient lead time to obtain proposals, quotations, or bids for goods and services requested by the departments, so that the goods and services may be delivered by the requested due date.

Through proper planning of purchases, each department will be able to realize savings through competition between vendors and will not be faced with shortages of commodities and materials.

In accordance with the PPP, the department director shall:

1. Inform and support departmental personnel on the requirements of the PPP and ensure adherence.
2. Communicate needs for supplies, equipment and materials to the Purchasing Manager.
3. Communicate requests for services and goods with enough lead time to the Purchasing Manager so that procurements can be made using applicable purchasing manual procedures.
4. Utilize effective material requirements planning to maximize efficiency for City procurement.
5. Provide accurate and complete information on items requested and timely preparation of requisitions.
6. Prepare item descriptions, specifications, and assist the Purchasing Manager in negotiation for materials, supplies, services or equipment of a technical or unusual nature when requested, and suggest possible sources of supply.
7. Designate certain employees with authority to prepare requisitions and make requests for purchase of certain items.
8. Inspect or supervise the inspection of materials, supplies, services and equipment delivered, and determine acceptableness of their quality, quantity, and conformance with specifications as requested by the Purchasing Manager.

Department directors may approve purchases in excess of the established limit in an emergency situation. Any purchases made outside of normal purchasing procedures must be reported to the Finance Director and to the Purchasing Office within one business day.

If department director has any questions concerning procurement procedures, the Purchasing Division encourages questions and is prepared to offer assistance. It is the responsibility of the Purchasing Manager to work closely with requesting departments when technical information is required to ensure that adequate equipment or services are obtained.

### **D. Supervisors**

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Each department director has the authority of establishing purchasing regulations for supervisors and other departmental personnel in addition to the regulations found within the PPP. Minor purchases which are routine in nature and total less than three thousand dollars (\$3,000.00) may be obtained by

supervisors if the goods and services can be acquired from vendors and fall within the regulations established by the Purchasing Manual. All invoices are also to be signed by the supervisor or department designee and/or submitted to the department director who will return the invoice to the Accounts Payable office on a daily basis.

A supervisor may approve purchases in excess of the established limit in an emergency situation. Any purchases made outside of normal purchasing procedures must be reported to the appropriate department director, or if he or she is not available, to the City Finance Director, and to the Purchasing office within one business day.

Department directors may authorize their personnel to purchase items up to the amounts specified in this policy. Accounts Payable will maintain a list of personnel authorized to make purchases. It is the responsibility of department directors to make additions or deletions to that list as needed.

## **E. General Authority**

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Regardless of the expenditure, it is the policy of the City to garner competition that produces the highest quality of goods and services at the lowest possible price, whether the item or service is subject to bid or not. The Purchasing Manager has the responsibility to ensure the timely availability of goods, services and supplies, as well as establish procedures and controls in the purchasing process to comply with all applicable laws and regulations. Furthermore, it is the policy of the City to allow the City Council to make final award on any expenditure exceeding the dollar amount governed by the State Competitive Bid Law, whether the item is subject to bid or not.

**Managing Directors have signature authority on any agreement binding the City to an expenditure of \$9,999 or less. All expenditures \$3,000 or more require a purchase order.**

- a. Any commitment to acquire goods or services for \$3,000 or more from budgeted funds prior to securing a purchase order is prohibited. Anyone creating or authorizing such a commitment prior to securing a purchase order may be subject to enforcement and disciplinary actions as set forth in the *Local Government Code, Subchapter D, Sections 252.061-252.063*. PLEASE DO NOT PLACE VERBAL ORDERS for any purchase \$3,000 or more.
- b. The function of the Purchasing Division is to organize and administer procurements for the City in accordance with the guidance, responsibility and authority delegated by the City Manager and the Council.
- c. Acquisition of the requested goods and services shall be made in accordance with the PPP. All requisitions must be verified and approved by the originating department director and/or designee. The department is responsible for ensuring that proper funding is established in their budget prior to the request of an order.
- d. Effective purchasing is a cooperative venture between the Financial Services Department (FSD) and other departments within the City. The level of service rendered by the Financial Services Department will be improved by a thorough understanding of the procedures presented herein.

- e. As a support organization of the City, charged with the responsibility of acquiring goods and services requested by individual departments, the Purchasing Division will function in a manner consistent with state law, the charter, council policies and sound business practices.
  
- f. The FSD is responsible for the expenditures of City funds in such a manner that all transactions will pass numerous audits with respect to State, Federal, and City procurement regulations.

## PART IV

### ETHICS

#### A. Employee Code of Ethics

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No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested directly, or indirectly in the sale to the City of any land, materials, supplies, or services, except on behalf of the City as an officer or employee. Any knowing and willful violation of this Section shall constitute malfeasance in office and any officer or employee guilty thereof shall be removed from his office or position. Any violation of this Section with the knowledge, expressed or implied, of the person or corporation contracting with the governing body of the City shall render the contract involved void per the City Charter, Article XII, Section 2.

By participating in the purchasing process, employees of the City of DeSoto agree to:

1. Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and communications.
2. Demonstrate loyalty to the City by diligently following the lawful instructions of the employer, using reasonable care of the authority granted.
3. Refrain from any private business or professional activity that would create a conflict between personal interests and the interest of the City.
4. Refrain from soliciting or accepting money, loans, credits, prejudicial discounts, and the acceptance of gifts, entertainment, favors, or services from present or potential suppliers.
5. Avoid unfairly dispensing special favors or privileges to anyone, whether as payment for services or not; and refrain from acceptance for self or family members: favors or benefits under circumstances which might be construed by a reasonable person as influencing the performance of your employment duties.
6. Engage in no business with the City, directly or indirectly, which is inconsistent with the conscientious performance of Governmental duties.
7. Handle confidential or proprietary information of the City or suppliers with due care and proper consideration of ethical and legal ramifications.
8. Never use any information gained confidentially in the performance of job-related duties as a means of making private profit.
9. Promote positive supplier relationships through courtesy and impartiality in all phases of the purchasing cycle.

10. Know and obey the letter and spirit of laws governing the purchasing function and remain alert to the legal ramifications of purchasing decisions.
11. Expose corruption and fraud wherever discovered.
12. Uphold these principles, ever conscious that public office is a public trust.

## **B. Vendor Code of Ethics**

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DeSoto is committed to a procurement process which fosters fair and open competition, while conducting business under the highest ethical standards and fostering the public trust. To achieve these purposes, City requires each vendor who seeks to do business with the City to subscribe to the following Code of Ethics.

1. A Vendor's bid or proposal shall be competitive, consistent and appropriate for the specifications submitted.
2. A Vendor shall not discuss or consult with other vendors intending to bid on the same contract or similar City contract for the purpose of limiting competition.
3. Vendor shall not make any attempt to induce any individual or entity to submit or not submit a bid or proposal.
4. Vendor shall not disclose the terms of its bids or proposal, directly or indirectly, to any other competing vendor prior to the bid or proposal closing date and time.
5. Vendor will completely perform any contract awarded at the contracted price pursuant to the terms set forth in the contract.
6. Vendor will submit timely, accurate and appropriate invoices for goods and/or services actually performed under the contract.
7. Vendor will not offer or give any gift, item or service of value, directly or indirectly, to a City employee, employee family member or other vendors contracted by the City.
8. Vendor will not cause, influence or attempt to cause or influence, any City employee or City Official, which might tend to impair his/her objectivity or independence of judgment; or to use, or attempt to use, his/her official position to secure any unwarranted privileges or advantages for that vendor or for any other person.

### **C. National Purchasing Institutes Code Of Ethics for Purchasing Division Staff**

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As a member in good standing of the National Institute of Governmental Purchasing and the National Purchasing Institute, the City of Desoto Purchasing Division shall adhere to the Code of Ethics as adopted and published by these organizations.

## PART V

### GENERAL PURCHASING PROCEDURES

#### **Statement**

The City Purchasing Manager is responsible for monitoring and controlling the purchasing commitments of the City and ensuring that all such commitments are drawn on a properly completed and approved purchase order form with supporting documentation attached as required.

- a. The Council shall assume responsibility for debts incurred in the name of the City so long as those debts are for purchases made in accordance with adopted city budget and current administrative procedures regarding purchasing and expending. Persons making unauthorized purchases shall assume full responsibility for all such debts.
- b. Unauthorized charges/purchases are those purchases made without a purchase order or prior approval from the City Manager.
- c. By designation of the City Council, the City Manager is responsible for monitoring and controlling the purchasing commitments of the City and ensuring that all such commitments are drawn on a properly completed and approved purchase order form with supporting documentation attached as required.
- d. City Manager or City Manager's designee shall have the authority to determine the method for the solicitation of bids.

**A. Purchasing Limits**

<u>Dollar Figure</u>	<u>Forms Needed</u>	<u>Supv. or Director Designee Approval</u>	<u>Department Director Approval</u>	<u>Purchasing Manager Approval</u>	<u>City Manager Approval</u>	<u>City Council Approval</u>
Less than \$2,999	None	★				
\$3,000 to \$24,999	Purchase Order 3 Quotations or Intergovernmental Contracts	★	★	★		
\$25,000 to \$49,999	Purchase Order Intergovernmental Contracts, or Bids or Proposals for \$25,000 and above procurement	★	★	★	★	
\$50,000 or more  (Formal Bids - State Required)	Purchase Order Council Approval Intergovernmental Contracts, Bids or Proposals,	★	★	★	★	★

★ Denotes signature approval

**1) Petty Cash (\$0 to \$75.00)**

No quotes are required when purchasing items with petty cash. Any item bought with petty cash cannot exceed \$75.00 (unless approved by the Department Director).

**2) Purchases less than \$3,000 (\$0.01 - \$2,999.99)**

Purchases less than \$1,000 do not require competitive bidding, quotation forms, or purchase orders. Directors, or their approved designees, may without further approval of the Purchasing Manager, make purchases less than \$3,000. Director approved designees may authorize invoices for payment and forward to the Financial Services Department.

The Originating division selects the vendor and places the order utilizing the City procurement card program (see procurement card policy). The Originating division also

places the order and/or picks up the materials. Upon receipt of good/service, the division should follow the P-Card approval process.

Should a problem exist with goods received which would warrant a delay in payment, Accounts Payable must be notified within 48 hours, by email, describing the problem and requesting a “hold” on the invoice until the problem is resolved. Accounts Payable shall be informed as to any status change of the order by the division that received the goods.

**3) Purchases of \$3,000 to \$9,999.99**

The Department Director must submit every purchase request for \$3,000 or more to the Purchasing Manager for approval. If a purchase is \$3,000 or greater, the Purchasing Agent must contact at least two Historically Underutilized Businesses (HUB), unless the list fails to identify a HUB that provides similar goods or services in Dallas County according to *Texas Government Code, Chapter 252.0215*.

The Department Director or Purchasing Manager must obtain at least three bid prices or quotes in writing, including any HUB quotes, and attach each to the purchase request, unless exempted from the competitive process. The Purchasing Manager will issue a purchase order when proper authorization is obtained. Purchase orders in the amounts of \$3,000 to \$9,999 must be authorized by the department director and Purchasing Manager.

**4) Purchases for \$10,000 and over**

The City Manager must approve in advance all expenditures for \$10,000 or more. Except as provided in Part VII-Non-Competitive Bid Items, competitive quotes are required up to \$24,999.99. The Department shall formally advertise for bids and award the bid to the lowest responsible bidder, or to the best value bid for the city if the proposed purchase is \$25,000 or more according to City policy.

The department shall first seek assistance of the Purchasing Manager when initiating the request for contractual goods and services. The formal bid procedures takes at least four to six weeks. The Purchasing Manager will be responsible for vendor solicitation and legal advertisements before the bid opening, and vendor notifications after the bids are considered and approved by the City Manager. Such goods and services may be acquired by the issuance of a purchase order.

5) **Purchases for \$50,000 and over**

City Council must approve in advance all expenditures for \$50,000 or more. Except as provided in Part VII-Non-Competitive Bid Items, a department must formally advertise for bids and award the bid to the lowest responsible bidder or best value bid for the city if the proposed purchase is \$50,000 or more in accordance with Texas Local Government Code chapter 252.021. Unless specifically exempted by State law or the City Charter, contracts that fall under this subsection must be competitively bid. A department shall not alter normal purchasing practice or engage in bid splitting in order to avoid competitive bidding or proper contract approval.

The best value evaluation process may be used at the discretion of the Purchasing Division. If Purchasing Division approves the use of the best value evaluation process for the procurement in question, bids will be advertised and the other applicable provisions up to bid opening will apply.

**Council shall award all contracts of \$50,000.00 or more, irrespective of the approval of the annual city budget that includes a descriptive line item of the proposed purchase; such as vehicles and computers.**

The department shall initiate the request for formal bids for goods and services by submitting a draft specification to the Purchasing Manager. The Purchasing Manager will assist the department in preparing the bid specifications.

The formal bid procedures takes at least four to six weeks. The Purchasing Manager will be responsible for vendor solicitation and legal advertisements before the bid opening, and vendor notifications after the bids are considered and approved by the City Council. Such goods and services may be acquired by the issuance of a purchase order or execution of a contract. Execution of a written contract or agreement shall be required for all service contracts.

**Bid Opening:** The Purchasing Manager or Director of Financial Services will read aloud all bid responses received by closing time and date to any interested parties present at the bid opening. In the case of an RFP, only vendors names will be read out loud. After tabulation of bids or proposals, staff will post bid tabulation electronically with a qualifying statement: "The tabulation listing of a bid should not be construed as a comment on its responsiveness or an indication that the City accepts such bid as responsive". A minimum of two other people are required at bid opening if not electronically recorded.

6) **Capitalized Fixed Assets**

A capitalized fixed asset is tangible and intangible property that the City can leverage as a resource in providing services to the residents and inhabitants of the City. A capitalized fixed asset includes land, infrastructure, buildings, furniture and fixtures, motor vehicles and equipment with a cost of \$5,000 or more and a useful life of more than two years. Capitalized fixed assets are acquired for use in normal operations and are not for resale. These assets are long-term in nature and are subject to depreciation. Capitalized assets and projects should be charged to a capital project asset account. Items costing less than \$5,000 should not be

charged to a capital account. Any capital purchases/acquisitions (i.e. new buildings, significant building renovations, new vehicles or other motorized equipment, or real property) should be reported to the Risk Manager for property liability insurance evaluation.

## **B. Exceptions to Competitive Bid Solicitations**

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### **1) Emergency**

Emergency purchases are made to meet critical, unforeseen needs of the City. When the City's ability to serve the public would be impaired if purchases are not made immediately, then the purchases are exempt from standard purchasing procedures due to the emergency nature of the event causing the purchasing need.

Valid emergencies are those that occur as a result of the breakdown of equipment which must be kept in operation to maintain the public's safety or health, or whose breakdown would result in the disruption of City operations. When this situation occurs, the department shall conduct the procurement of supplies and services as needed, and must contact the Purchasing Manager or City Manager within one (1) business day after the emergency occurs. The department must submit to Purchasing the following emergency purchase documentation:

- a. Certification of Emergency Purchase form (Attachment B), signed by City Manager, if applicable
- b. Invoices for purchase
- c. Requisition

### **2) Sole Source**

Sole-source purchases are items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies as defined by local government code. Where more than one distribution source is established, it ceases to be a sole source. Sole source claims must be submitted on the vendor's letterhead and be reviewed annually.

When a department has identified a specific item with unique features or characteristics essential and necessary to the requesting department and no alternate products are available, a Sole/Single Source Information form must be filled out and approved by the department manager or director, along with the requisition for any materials or services, and provided to the Purchasing Manager in advance for review and approval. The form should explain and fully describe the conditions which make the supply a sole source. See Attachment A for the Sole/Single Source Information form that can be submitted for this type of purchase. The Purchasing Division will make the final determination of who qualifies as a sole source vendor.

State law provisions exist for the following types of procurements from a sole source:

1. patents, copyrights, secret processes, or natural monopolies;
2. films, manuscripts, or books.
3. electricity, gas, water and other utility services.
4. captive replacement parts or components for equipment.
5. books, papers, and other library materials for a public library that are available only from the person holding exclusive distribution rights to the materials.

6. management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significantly financial or other benefits.
7. Emergency repairs to ensure public safety.

After an independent review by the Purchasing Division, an interpretation will be provided to the department as to whether the item under review is a sole source item. Sole source purchases over \$50,000 must be approved by City Council.

### 3) **Single Source**

Single Source procurement is one in which two or more vendors can supply the commodity, technology and/or perform the services required by a department. Single source selection shall be based on **objective business decisions such as; leveraged volume purchase contracts, standardization programs/systems, parts/service provided by "original equipment manufacturer", consistency of quality/batch control, "just in time" delivery requirements, etc.** Single source vendor selection based purely on personal preference or subjective rationale will not be approved.

In a Single Source procurement, the agency must document on Attachment A-Sole/Single Source Information form the following: (i) the circumstances leading to the selection of the vendor **including the alternatives considered**; (ii) its rationale for selecting the specific vendor; and (iii) the basis upon which it determined the cost was reasonable, as in the case of a Sole Source procurement, and how that conclusion was reached. All such documentation is required by the Purchasing Manager in order to review the proposed contract.

### 4) **Cooperative Purchasing**

Cooperative purchasing allows entities to order under established contracts without additional formal bidding. City of Desoto, as a governmental entity, is eligible to participate in many cooperative purchasing programs, including those listed in the table below, provided the contracts were competitively advertised and awarded, no additional justification or bidding is required.

There are many reasons the City of Desoto uses cooperative purchasing contracts as listed below:

1. Lower costs through increased volume. By combining orders, the quantities purchased will increase, resulting in the purchaser earning greater quantity discounts.
2. Lower (shared) administrative costs. By eliminating duplicated effort, participants save on time and costs.
3. Improved response from vendors. Vendors realize that they are bidding on a larger order and will be encouraged to compete for the purchase. Vendors from the entire area are attracted, rather than from just one locality. Greater competition leads to lower bids.
4. Shared experience leading to better product specifications. Combining the knowledge of all members of the cooperative effort results in developing a much better specification for goods and services purchased. Often, an acceptable specification will already exist between the parties..

5. Better compliance with state statutes on purchasing. Since most purchases will be subject to competitive bids, they will be in compliance with the statutes on bidding. There should also be a heightened awareness of legal requirements.

When Purchasing advertises goods or services through a request for bids, if the goods are of a nature and character that it is feasible and advantageous to require discounts or special prices for other interested government entities as well as the City, Purchasing shall include specifications requiring vendors to agree to make their prices available to other government entities who enter into a cooperative purchasing agreement with the City.

All cooperative purchasing agreements, whether entered into by the City with another government entity or local cooperative organization, or vice versa, *must* be approved by the City Council.

### **11) Quotes**

All department directors must plan their regular budgeted purchases of three thousand dollars (\$3,000) or more so that quotations, proposals, or bids may be obtained by the Purchasing Division by the requested due date or date needed. Award of proposals or quotations will be given to the most responsible and qualified vendor, with the best value or lowest price.

Quotations may be obtained with the assistance of the Purchasing Division in the following manner:

- a) In person.
- b) Over the phone.
- c) Written quotations as per "Request for Quotation"
- d) Faxed quotes are acceptable and preferred.

## **C. Purchasing Process**

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1. All purchases \$3,000 and over shall be made by an official City of DeSoto Purchase Order.
2. Purchase requisitions will be initiated by the City departments and used to generate a Purchase Order. The department director or their designee shall approve all requisitions prior to submittal to Purchasing.
3. Once approved by the department director, the Purchasing Manager shall approve the purchase order. All liability for processing the purchase order is the responsibility of the Financial Services Department.
4. A purchase requisition must clearly and accurately represent all of the following requirements:
  - a. Company name or suggested vendor and address
  - b. Date

- c. Shipping instructions (Complete shipping address including receiver's name and department)
- d. F.O.B. point/destination
- e. Quantity and unit of item(s)
- f. Description of goods or services ordered
- g. Unit price
- h. Discount (Make note of any discount even if \$0 or 0%)
- i. Prices extended and totalled correctly
- j. Freight and/or delivery charges if applicable
- k. Vendor contract # (Top left corner)
- l. Account code to be charged

#### **D. Requisition Process**

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1. No ordering of goods and services \$3,000 or over will be processed through Purchasing without a requisition, unless it is travel related.
2. In the event you want the assistance of the Purchasing Division for purchases between 1,000 and 2,999, then you must contact the Purchasing Manager.
3. Purchasing will review requisitions based on previous experience with the item, records of past purchases, and vendor catalogs. Purchasing Manager retains the right to change the vendor, if deemed to be in the best interest of the City after consulting with the Department Director.

#### **E. Payment of Vendors**

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When the goods or services are received by the requesting department, the department must submit the original invoice with the Purchase Order number to the Accounts Payable section within five (5) business days of receipt of invoice to ensure timely payment.

Vendors that have obtained P.O.s should submit all invoices to the Accounts Payable Section. The invoice must have the P.O. number on the invoice or it may be returned. Invoices will be transmitted to the department for approval and verification of goods and services. Invoices will be paid 30 days from receipt of invoice. Therefore, departments should refrain from promising vendors that payments will be made prior to the 30 day period.

Invoices that are not assigned to a purchase order number, must be sent to the Accounts Payable section with all receiving documents and be signed off by the appropriate directors or designees.

The Purchasing Department will create a Blanket Purchase Order for a department upon request. The Blanket Purchase Order will reflect the estimated budget for the goods or services. All invoices for that blanket PO must not go over the allowed amount without appropriate approvals. It is imperative that all receiving documents are forwarded to the Accounts Payable Office immediately.

## **F. Tax Exemptions**

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The City of DeSoto is exempt from payment of taxes under Chapter 20, Title 122A, Article 20.04, Revised Civil Statutes of Texas, for the purchase of tangible personal property. Any use of the City's tax exemption certificate for personal purchase is prohibited. Anyone using the City's tax exemption certificate for personal purchases may be subject to prosecution under the Texas Penal Code, Chapter 39, Abuse of Office, Section 39.01.

The Texas Sales Tax Exemption Certificate may be requested from the Accounts Payable Section.

## PART VI

### BIDDING PROCESS

#### Statement

The Texas Local Government Code requires that before a municipality may enter into a contract, other than a contract for insurance, that requires an expenditure of more than \$50,000 from one or more municipal funds, the municipality must comply with the procedure prescribed by Chapter 252.021 for competitive sealed bidding or competitive sealed proposals.

If any of the following contracts are procured by a method other than request for bids and require approval by Council, the contract should not be placed on the Council agenda unless the standard contract form is substantially agreed to (**subject to agreement by the City Attorney Office in writing to changes in any of the material terms of the standard contract form**) and the negotiated business deal upon which the contract is based is complete and substantially agreed to by both parties:

- a. Procurement of high technology items.
- b. Alternative delivery method contracts.
- c. Development and participation agreements.
- d. Concession contracts
- e. Management services agreements, including but not limited to management services for a major cultural facility or City Operations facility.
- f. Interlocal agreements
- g. Revenue contracts, including but not limited to naming rights and sponsorship agreements.

Except as otherwise provided in this Policy and Procedure, the Purchasing Manager is responsible for the procurement of all goods and services.

#### **A. Sealed Bid or Proposal Procedures**

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The bid activity must be coordinated with and maintained by the Purchasing Division. It is the policy of the City to use a sealed bid proposal or design/build procedure in compliance with Chapter 252 of the State of Texas Local Government Code for any procurement which will total \$50,000 or more. With the exception of Public Works contracts, the Purchasing Manager will assist all departments with the bidding process.

#### **B. Bid Specification and Department Requisition**

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All sealed bids must include a set of complete and detailed specifications of the item or items and/or services to be purchased. **The creation of specifications is the sole responsibility of the requesting department.** The Purchasing Manager will assist the requesting department in any way necessary, but will not be responsible for the final content of the specifications. Purchasing Manager shall have the ultimate right of approving such specification to ensure that it is not restrictive.

The Purchasing Manager is responsible for all remaining parts of the bids/proposals terms, conditions and document requirements including any legal terminology required by law. Vendors can be consulted as a source for specification information as long as they are advised that a sealed bid procedure will be used and the vendor cannot be treated with any type of favoritism.

An approved requisition must be submitted to Purchasing Manager for all formal bids and proposals. The requisition must include the funding account number and budgeted amount authorized for the purchase. The requisition along with the specifications should be submitted for approval as called for in the purchasing manual. **Sufficient funding must be identified before the bid process can progress.**

### **C. Bid Recommendation and State Law Regarding Bid Awards**

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The requesting department is solely responsible for reviewing the specifications offered in each bid to insure the specifications meet the bid requirements. If the bids offered meet the specifications requested, per *Texas Local Government Code Chapter 252, Sub Chapter C, 252.043*, the recommendation may be made based on the lowest bidder.

### **D. Criteria used to determine “Best Value” for the City.**

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The City of Desoto shall award the bid to the lowest responsible bidder or to the bidder who provides good or services at the best value for the City. In determining the “best value”, the following criteria will be considered as amended in section 252.043 of the Texas Local Government Code:

1. the purchase price;
2. the reputation of the bidder and of the bidder’s goods or services;
3. the quality of the bidder’s goods or services;
4. the extent to which the goods or services meet the municipality’s needs;
5. the bidder’s past relationship with the municipality;
6. the impact on the ability of the municipality to comply with laws and rules
7. relating to contracting with historically underutilized businesses and on-profit
8. organizations employing persons with disabilities;
9. the long-term cost to the municipality to acquire the bidder’s goods or services; and
10. any relevant criteria specifically listed in the request for bids or proposals.

## **E. Bid Preparation and Administration**

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All sealed bids and proposals will be prepared and administered by the requesting department and coordinated with the Purchasing Manager. The only exceptions are projects that involve professional services. The requesting department will be responsible for notifying the Purchasing Manager on any bid or proposal that they issue, the dates of any advertisements, pre-bid conferences and bid opening dates.

The Purchasing Manager will be responsible for posting the bids on the City Website to insure all bid information is available on the Website and the local newspaper. On both bids and proposals, a bid number will be assigned and advertising dates, pre-bid meeting dates and the bid opening date set. The Purchasing Manager or his designee or the designee assigned for bids/proposals will be responsible for the bid opening and reading of the bids received.

Once opened, a pre-audit bid tabulation will be created. Once a complete audit and bid tabulation are completed by the requesting department, the tabulation along with all bids will be sent to the Purchasing Manager. When all bids have been reviewed, the requesting department will be responsible for submitting to the Purchasing Manager a recommendation of bid award.

## **F. Bid Opening Procedures**

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Receiving competitive bids and proposals must be done properly in order to ensure that no possibility of favouritism or even the appearance of favouritism.

Each bid or proposal must be returned to the Purchasing Manager or designee, with the bid/proposal identification number marked on the outside of the envelope/box. Only one bid/proposal should be submitted per envelope. If more than one bid is to be submitted, require that the vendor use separate envelopes for each one. The bid/proposal envelope should be time and date stamped in the designated office as soon as it is received. The bid/proposal envelope(s) should then be filed unopened together with the other bids/proposals for the same invitation/request number.

Bids/proposals are opened at the hour specified in the invitation/request at the place named in the RFP. Vendors and the public are invited and encouraged to attend the bid opening. In case no observers attend the bid opening, always have a member of another office act as witness so that charges or irregularities can be disproved.

In order to establish a standardized format of bid openings the following procedures should be followed:

1. The Purchasing Manager or his designee or the designee assigned by the requesting department shall conduct all bid openings.

2. In addition to the Purchasing Manager or his representative there will be at least one City employee from the department who submitted the purchase request at all bid openings. This employee will be knowledgeable of the bid specifications and should be prepared to answer all questions that pertain to the specifications. At bid openings the requesting department representative will act as the recorder of all information that is read at the bid opening and will publicly confirm that all information was read completely and truthfully.
3. At bid openings all bids will be opened and all pricing will be called out in accordance with the bid opening procedures.

## **G. Electronic Bids Policy**

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1. Electronic sealed bids or proposals shall be in accordance with Section 252.0415(a) of the Local Government Code requiring the identification, security, and confidentiality of electronic bids or proposals to remain effectively unopened until the proper time. The electronic bids shall not be opened or printed until after the bid offer closes.
2. Electronic reverse auctions shall be in accordance with Section 271.906 of the Local Government Code and defined by Section 2155.062(d), Government Code, requiring a real-time bidding process taking place during a previously scheduled Internet location with multiple suppliers, anonymous to each other, submitting bids to provide goods or services.

## **H. Contested Bids/Protests**

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If a department is made aware of, or is contacted by a vendor regarding a protest relating to advertising of bid notices, deadlines, bid opening and all other related procedures under the Local Government Code, as well as any protests relating to alleged improprieties or ambiguities in the specifications, the department should either contact the Purchasing Manager or instruct the vendor to contact the Purchasing Manager. The Purchasing Manager will attempt to determine the reasons behind the potential protest, and failing to satisfy the vendor, will instruct the vendor to prepare a written protest. The written protest should:

- Include both the name and address of the protester, as well as the vendor they represent, if different.
- Identify the bid number and the item.
- Contain a statement of the grounds for protest and any supporting documentation.
- Protests must be submitted within five (5) days of the bid opening.
- A decision and response to the protest will be prepared by the user department, within ten (10) days of receipt of the protest. The response to the protest will include information regarding the appeal of the staff determination to the City Council.

## **I. Rentals/Leases, Services and Annual Maintenance Agreements**

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- 1) Any contract or agreement for rental, lease, lease-purchase, maintenance or service agreements, totalling \$3,000 or more should be sent to the Purchasing office to determine if bids will be solicited for the services. A contract or agreement for services less than \$50,000 may be negotiated without securing advertised proposals or bids at the discretion of the Purchasing Manager.
- 2) Contracts for the lease or rental of equipment or materials where part or all the payments may apply toward eventual purchase will be treated as actual purchases. The standard competitive bid or proposal process will be used regarding such contracts.
- 3) Any contracts for involving equipment or materials can be acquired with the use of a purchase order with proper documentation attached.
- 4) All contracts MUST be ratified and signed by the City Manager and, where appropriate, the Council prior to committing or obligating the City with any supplier or vendor that is \$50,000 or over annually.

## **J. APPROVAL/AWARDING OF BIDS**

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### **Statement**

Approval for all capital expenditure, supplies, and services valued at \$50,000 or over shall be made by the City Council or otherwise approved during the fiscal year budget process.

- If circumstances warrant, Council consideration and approval of any purchase may be requested.
- The best value or lowest bid submitted by a qualified bidder, that meets the requirements of the City may be recommended for purchase.
- The user department shall be responsible for making recommendations for items. Whenever the lowest bid price is not recommended, the user department shall provide written justification for such recommendations.
- The recommendations for purchase shall include an assessment of considerations such as: individual price, total price of items, life cycle cost, delivery dates, location of vendor, transportation charges, good business practices, and conformance to appropriate local, state, and federal ordinances, statutes, and regulations.
- In all cases where bidding is required and where two or more bidders submitting the lowest and best bids in connection with a proposed contract, and these bids are identical in both amount and nature, the City may enter into a contract with only one of the bidders and reject all other bids. If one of the lowest bidders is a local vendor, then the bid will be awarded to the local bidder. In the event both bids are non-local, then the award of the bid is determined by lot. Non-local bids over \$50,000 will be drawn by Council.

## PART VII

### NON-COMPETITIVE BID ITEMS

#### **Statement**

The City does not require competitive bids for any of the following goods and services. Such goods and services may be acquired by the issuance of a purchase order or execution of a contract.

#### **A. Emergency Situations**

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An emergency is an unforeseen situation that adversely and unduly affects the life, health, or convenience of the citizens of DeSoto; or; a circumstance that would cause a loss to the City.

In an emergency, the department director may proceed with the emergency acquisition. If the cost is \$3,000 or more, the department shall send a confirming requisition, along with a completely filled out Certification of Emergency Purchases form and invoices to the Purchasing Manager within one business day of completion or receipt of goods or services. The Purchasing Manager will then assign a purchase order number and advise the user department to forward that number to the appropriate vendor in accordance with *Texas Local Government Code 252.022 (1), (2) & (3)*.

#### **B. Professional/Consulting/Planning Service Contracts:**

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All Professional/Consulting/Planning Service Contracts in excess of \$50,000 must receive City Council approval. Approval through the requisition process is required for all contracts of \$50,000 or less.

Professional services means services within the scope of the practice, as defined by the State of Texas. The City cannot select a provider of professional services based on competitive bids submitted for the contract or for the services, but shall make the selection and award; (1) on the basis of demonstrated competence and qualifications to perform the services; and (2) for a fair and reasonable price. The professional fees under the contract must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations; and may not exceed any maximum provided by law in accordance with Texas Government Code §2254.002, §2254.003.

The City, acting by its City Manager or appropriate department director, shall first select the most highly qualified provider of these services on the basis of demonstrated competence and qualifications, and attempt to negotiate with that provider a contract at a fair and reasonable price.

If the City cannot negotiate a satisfactory contract with the most highly qualified provider, then the City shall formally end negotiations with that provider, select the next most highly qualified provider and attempt to negotiate a contract with that provider at a fair and reasonable price.

The City will continue the process described to select and negotiate with providers until the City enters into a contract. The City Manager and/or the appropriate department director will execute contracts for the City.

The Attorney General Opinions have defined professional services as:

- Abstracters
- Certified Public Accountant (excluding external auditor)
- State Certified or Licensed Real Estate Appraisers
- Architects
- Models
- Optometrists
- Physicians
- Plat Book Preparers
- Private Consultants
- Property Tax Consultants
- Scientists
- Supervisors of Public Construction Projects
- Surgeons
- Land Surveyors
- Tax Appraisal Engineers
- Landscape Architect
- Attorney
- Professional Engineers in connection with his professional employment or practice

**Services Performed and Paid on a Daily Basis**

If the City hires a professional or consultant for a project on a daily basis and pays for services daily as the work progresses, the procurement of services is exempt from competitive bidding requirements.

**C. Consulting Services-Responsibilities of Initiating Department**

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The initiating department identifies a need for outside consulting services and develops in writing a project scope and time frame, description of work involved, and selects a project manager.

**Options for Consultant Contracting**

1. For contracts of \$50,000 or less, the initiating department may select a consultant (other than an architectural or engineering consultant) based on a minimum of three contacts from a list provided by Purchasing, or make selection based on the options listed below:
  - (a) Request for Qualifications - Enables the initiating department to seek firms who can indicate to the City an ability to perform the required work and give the City an opportunity to review their credentials and obtain a cost for the services in question.
  - (b) Request for Proposals (RFP) - Enables the initiating department, when a group of qualified consultants has already been identified by the initiating department, to fully communicate the project scope to potential proposers and review a detailed fee proposal received in response to the RFP.

If one of the latter methods are selected, documentation of three contacts is required and should be included with the final selection. Upon completion of successful negotiations, the formal approval procedures are as follows:

- i. The proposal, representing agreed terms and fees meeting selection criteria and project scope, is submitted by the selected consultant to the initiating department.
- ii. The initiating department enters a requisition, attaching the consultant proposal of work scope and fees, and routes for approval.
- iii. Alternatively, the initiating department may request a formal contract be prepared by the City Attorney.

#### **D. Architectural/Engineering/Planning Services Contracts Greater than \$50,000**

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1. The initiating department develops a request for qualifications and transmits by cover memo to Purchasing, including any special instructions (e.g., questionnaires, suggested vendors, deadlines).
2. Purchasing shall review the request for qualifications solely for clarity, completeness, and compliance with this policy. After review, Purchasing shall publicly advertise the request for qualifications, in the same manner as for other competitively bid or proposed items, once each week for at least two weeks before the deadline set for receiving and opening responses. Purchasing shall also post the request for qualifications on the internet and notify the local Chambers of Commerce and M/WBE organizations for distribution to certified M/WBE vendors and subcontractors. Purchasing and the initiating department shall consult with the City Attorney's Office regarding any legal issues that arise prior to or during advertisement.
3. After receipt and opening of responses to the request for qualifications, Purchasing forwards the responses to the initiating department for evaluation. The initiating department may short-list the responses to the RFP for final interviews and additional inquiries.

#### **E. Purchase of Land or Right-of-Way**

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The purchase of land or right-of-way is exempt from competitive bidding requirements.

## PART VIII

### CHANGE ORDERS

#### Statement

A change order is required if, after the contract has been executed:

- a. Changes in plans or specifications are necessary;
- b. It is necessary to decrease or increase the quantity of work to be performed;
- c. It is necessary to decrease or increase the quantity of materials, equipment, or supplies to be furnished.
- d. Change orders for construction and public works contracts will be addressed in Part X.

#### **A. Material Changes**

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A material change in scope, quantities, or related work may not be made. A material change is defined as a substantial revision.

In the event there is a change to a contract or purchase order, a change order form shall be completed for all written contract documents. Also all change orders must include sufficient explanation or detail for the Purchasing Manager to make an informed consent to change the original contract. If necessary, a supplemental memo or supporting documentation may be attached to the change order.

#### **B. Changes to Work Performed, Materials, Equipment or Supplies (other than Public Works)**

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If the change order involves an increase or decrease of \$50,000 or less, the City Manager (or City Manager's designee) may approve the change order request. **The original contract price may not increase by more than 25 percent. The original contract price may not be decreased by more than 25 percent without the consent of the contractor.**

Once you have reached the cumulative total of \$50,000, each subsequent change order must go to Council for approval. This requirement is applicable regardless of the original contract amount.

#### **C. Changes to Professional Services Contracts**

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Changes to the standard Professional Services Contract for Architects and Engineers may be approved by the City Manager (or City Manager's designee) provided that the change order does not increase or decrease the original contract amount by more than \$50,000.

Once you have reached the cumulative total of \$50,000, each subsequent change order must go to Council for approval. This requirement is applicable regardless of the original contract amount.

## **D. Changes to All Other Professional Services Contracts**

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Written change orders to the Standard Consultant Contract may be approved by the City Manager or the City Manager's delegate, provided that the change order does not increase the amount of the Contract by more than fifty thousand dollars (\$50,000.00). Changes that increase the contract by more than \$50,000 must be approved by the City Council prior to commencement of the services or work.

## **E. Change Order Routing Procedures**

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1) CHANGE ORDERS OF \$0.01 TO \$2,999.99

Approval for change orders less than \$3,000 may be authorized by the Department Director. The change order form is required and shall be approved by the following people:

- Department Director
- Project Manager
- Contractor

In the event a purchase order is created, change orders must be forwarded to Purchasing within one week of execution in order to increase/decrease the encumbrance on the Purchase Order.

2) CHANGE ORDERS OF \$3,000.00 TO \$49,999.99

Change orders for \$3,000 to \$49,999.99 must be pre-approved by the following people prior to performance of the work:

- Project Manager
- Purchasing Manager
- Department Director
- Financial Officer
- City Manager
- Contractor

Executed change orders must be forwarded to Purchasing within one week of execution in order to increase/decrease the encumbrance on the Purchase Order.

3) CHANGE ORDERS OF \$50,000.00 OR MORE

All change orders greater than \$50,000 of the original contract amount are subject to the bidding statute and require Council approval prior to the commencement of the services or work.

## PART IX

### ACQUISITION OF AUTOMATED INFORMATION SYSTEMS EQUIPMENT AND SUPPLIES

#### A. Information System Requests

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All requests for computer equipment, software, telecommunications and related services or supplies should be submitted to the Information Technology (IT) Department for review and technical evaluation. IT will review each request for compatibility with other hardware and software and will investigate alternatives.

Whenever possible, IT will provide the requesting department with written or verbal recommendations and comments within three (3) working days of receiving the request. No purchase orders for computer related equipment or supplies will be processed by Purchasing without IT approval.

If it is determined that a response cannot be provided within three (3) working days, IT will so notify the requesting department upon receiving the request or as soon thereafter as possible.

Recommendations and comments will include but not be limited to:

- a. Additional costs incurred because of the purchase;
- b. Compatibility considerations;
- c. Cost effectiveness of the request; and
- d. Alternatives that would effectively meet the users' needs.

#### B. Determining “Best Value” Procurement Decisions

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Products or services that are associated with automation (computers) or telecommunication systems may be purchased through the Texas Department of Information Resources (DIR) or other approved Purchasing Cooperative Programs. Purchases made through approved Purchasing Cooperative programs satisfy our competitive bidding requirements. However, the City is responsible for determining “best value” when making these procurement decisions. The purchase must be in the City’s best interest and based on best value criteria such as:

- a. installation costs and hardware costs;
- b. the overall life cycle cost of the requested equipment;
- c. the estimated cost of employee training and estimated increase in employee productivity
- d. estimated software and maintenance costs;
- e. compliance with applicable standards and compatibility; and
- f. other criteria determined to be in the City’s best interest.

When possible, at least (3) vendors should be invited to quote or bid on automated information system purchases greater than \$3,000. Selected vendors should be provided with specifications. This may be done via mail, email or in person. Regardless of the method, all information should be consistent and well documented.

Information technology purchases greater than \$50,000 shall be made through a formal Request for Proposal process coordinated by the Purchasing division.

Purchases made through the General Services Administration (GSA) Schedule 70 and Texas Multiple Award Services (TxMAS) or other approved Purchasing Cooperative programs satisfy our competitive bidding requirements and may be subject to the procedures described in this section as determined by the Manager of IT, Financial Officer, and Department Director.

### **C. Placing the Order**

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After all questions have been resolved and a best value determination has been made, IT will prepare the necessary purchase requests, all required approvals will be obtained, and purchase orders secured. IT will place the orders.

#### **Exceptions**

Exceptions to the above process will occur when:

- a. IT is unable to respond to a request within three (3) working days, or
- b. The request is of an emergency nature.

#### **Purpose**

Handling automated information system related purchases in this manner will:

- a. Standardize the type and quality of equipment in the City's inventory;
- b. Help ensure that purchases are made with a minimum of delay and confusion;
- c. Facilitate tracking of requests and help expedite the purchasing process;
- d. Assist IT in maintaining accurate inventories for insurance, licensing and other purposes; and contribute to the most effective use of City resources.

#### **Appeal**

If the requesting department disagrees with the recommendations of IT, they may either request that additional alternatives be developed or submit the request to the City Manager for disposition. In such instances, the decision of the City Manager will be final.

## **D. Major Purchase Approval**

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Prior approval of the City Manager will be required for all major computers related purchases not included in the Technology Plan (Equipment Replacement Plan) and approved Budget. The City Manager will establish and/or revise such procedures as may be necessary to ensure that the acquisition of computing products are handled in an effective and efficient manner.

## **E. Replacement Computer**

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The IT department manages an Electronic Equipment Replacement Fund (EERF). Computers, printers, servers, telephone systems and standard software used city-wide, such as Microsoft Office, are replaced on a pre-determined cycle and must be surrendered for replacement on a one-to-one basis. The goal of the EERF is to ensure City electronic systems maintain maximum uptime, reliability and compatibility with existing and emergent technologies. With that in mind, after replacement such technology may not be redeployed or otherwise put back into use due to maintenance and reliability concerns.

## **F. Hardware**

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New computers and printers (non-replacements, such as for a newly created position) are paid for out of individual departments' budgets. Twenty-five percent of the cost of the hardware must be budgeted to cover the first portion of the Electronic Equipment Replacement Fund program (EERF). The department must also purchase the Microsoft Office license as well as any associated licensing for existing software programs used by the department. Consult the Information Technology department when budgeting for computer purchases to ensure compatibility and standardization. The IT department will order and install the equipment.

Existing computers are replaced out of the EERF on a predetermined schedule with a standard computer system as specified by the IT department. Replacement and repair of standard computer hardware is handled by the IT department. Departments requiring a special hardware configuration will pay a one-time fee to cover any cost above the standard configuration, as well as a replacement charge on the overage. Thereafter it will be replaced from the EERF at no charge to the department. The IT department will release standard computer configurations and costs annually at budget planning time. Any additional or non-standard equipment is covered by the department. Consult the IT department if you are unsure whether your equipment is standard.

New and replacement peripheral equipment such as scanners, digital cameras, and external hard drives are not standard equipment and therefore are paid for out of individual departments' budgets. Consult the IT department before making purchases of this type to ensure compatibility and standardization. The IT department will order and install the equipment.

Printers are repaired or replaced by the IT department on an as-needed basis. IT staff will determine whether a printer needs to be repaired or replaced and will do so at its discretion.

Purchase, repair and replacement of fax machines are the individual department's responsibility. The IT department will assist upon request in determining whether fax equipment is in need of repair or replacement.

#### **G. City-wide (standard) software**

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Standard software is software that is installed on every City computer regardless of department. This includes the Microsoft Windows operating system and the Microsoft Office suite. Departments are responsible for the cost of licensing such software for all new computers. The IT department funds replacements and upgrades when necessary, at its discretion. Consult the IT department for Office pricing information on new computers.

#### **H. Department-specific (proprietary) software**

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The initial purchase and subsequent upgrades of department-specific software are budgeted and paid for by the individual department. Consult the IT department before making any purchases of this type. IT staff will provide technical input, analysis, testing, project management, installation and procurement assistance where necessary.

#### **I. Desktop phones**

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The IT department pays for maintenance and replacement of existing city system phones. New line installations and telephones are paid for by the requesting department only after IT staff approval. The IT department will order and install the equipment.

## PART X

### CONTRACT RENEWAL & ROUTING PROCEDURES

#### A. Contract Renewals

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##### **Renewal Terms**

Renewal terms for contracts subject to competitive bidding should be limited to two (2) renewals following the original term. Exceptions may be made on a case by case basis when in the best interest of the City.

##### **Multiple Award Contracts**

When multiple vendor awards occur, if all vendors do not agree to renew, the contract in its entirety should be rebid.

##### **Price Changes**

The renewal must be under the same terms and conditions as the original contract; provided, however, that the unit prices bid under the original contract may, by mutual agreement, be increased by no more than eight percent (8%) of the original contract price.

##### **Vendor Performance**

Vendor performance will always be a consideration when deciding whether or not to renew or rebid.

#### B. Contract Routing Procedures

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##### **General Information**

All written contracts, whether they have been competitively bid or not, require the approval of the Purchasing Manager, Financial Services Director and the City Manager.

##### **Contracts greater than \$50,000**

Contracts greater than \$50,000 require Council approval. Legal review and approval must be obtained for any contract where the scope of services has been changed, prior to Council action.

##### **Contracts less than \$50,000**

A City Manager Approval signature should be obtained for all contracts greater than \$10,000 but less than \$50,000.

##### **Legal Review**

Legal review is recommended, but not required for purchase order transactions; procurement card purchases, and standard form contracts less than \$50,000 in amount. Legal review is required on all contracts being presented to Council for approval.

## PART XI

### STATE and FEDERAL GRANTS

#### **Compliance**

In compliance with Federal and State rules, all local government purchasing entities are required to check the list of vendors excluded from doing business at the federal level by utilizing the federal Excluded Persons List System (EPLS). No contract should be awarded to any person/entity listed on the EPLS system.

Please contact the Purchasing Manager for instructions on how to access the EPLS system.

**NOTE: This requirement is mandatory for any procurement transaction regardless of funding stream.**

## Part XII

### PROCUREMENT CARD PROGRAM

Training on use of purchase card and the purchase card policies and procedures shall be organized for every eligible staff before a purchase card is issued to any staff. The purchase card policies and procedures are attached as annexure to this Purchasing Policies and Procedures.

## Part XIII

### PUBLIC WORKS CONSTRUCTION PROJECTS

#### A. Professional Services Act-Construction Projects

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The Professional Services Procurement Act allows the procurement of architectural or engineering services through a two-step selection process. First, the City shall select an individual or firm capable of performing the services, on the basis of demonstrated competence and qualifications. The City shall then enter into negotiations for a contract at a fair and reasonable price.

#### B. Request for Proposal (RFP) and/or Request for Qualification (RFQ) Process

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1. The RFQ process is required only under the following conditions:
  - a. For A/E services on construction projects with an estimated construction cost greater than or equal to \$1,000,000.
  - b. For planning and analysis projects or studies where the professional services fee is estimated to be greater than or equal to \$50,000.
  - c. If any portion of the scope of work includes architect/engineering services, a Request for Qualifications (RFQ) is required subject to the provisions provided in this policy.
  - d. Projects may be grouped allowing for a single RFP process to be used to hire multiple projects.
  - e. A single consultant can be hired for a group of projects or multiple firms can be selected and assigned projects from the list. **The consultant list obtained by this process cannot be used for projects not stated at the time of the RFP.**
  - f. The RFP process may be used to hire a program or project manager for a group of projects.
2. The RFP process can be waived in cases where a proposed project is the extension or expansion of a previous project, and it is in the best interest of the City to use the same consultant because of his/her familiarity with the project.
3. Selection of Qualified Firms:

In procuring architectural or engineering services, the City shall:

  - a. First select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and
  - b. Then attempt to negotiate with that provider a contract a contract at a fair and reasonable price.

- c. If a satisfactory contract cannot be negotiated with the most highly qualified provider, the City shall formally end negotiations with that provider and begin negotiations with the next most highly qualified provider.
- d. The City shall continue this process to select and negotiate with providers until a contract is entered into.

### C. Bidding Responsibility

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The Public Works department will assist Purchasing with bid numbers and openings. The Public Works Department will be responsible for maintaining all bid documentation required by State Law and for obtaining all necessary contracts, bonding and insurance for each project as well as conducting pre-bid conferences and bid openings.

**This policy only relates to major public service projects such as buildings and roads.** All other purchasing requirements should be processed through the Purchasing Manager.

To insure coordination of and adherence to PPP, the Public Works Department should complete the following BEFORE issuing any bids:

- 1) Obtain a bid number from Purchasing that will track the project for audit purposes.
- 2) Advise Purchasing of the advertisement dates, pre-bid conferences and bid opening date.

**Purchasing Manager will be responsible to insure that any Public Works Department project is included in the bid opportunities section of the City Internet Web Site.**

### D. Construction Contract Modification Policy

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These procedures are to be followed when deviation from the scope of a construction project results in a change in the total contract amount.

#### **Definitions as applied to this policy:**

- **Field Modification** – An item of work that changes the scope of the work and/ or the contract specifications, but is not more than the approved original contract and authorized contingency amount as outlined below.
- **Change Order** – An item of work that changes the scope of the work and the contract amount **plus** the authorized contingency amount, up to 25% over the original contract amount. Any change order **over** 25% of the original contract amount must be re-advertised for bids.
- **Contingency Amount** – A fixed sum of money added to the contract sum. The amount of contingency depends upon the total project amount and complexity of the project. A schedule is attached. The schedule may be modified if an unusually complex project is considered. Any deviation from the typical contingency schedule must be accompanied by written detailed explanation for the deviation for approval by Council.

### Contingency Amount Schedule

1. Water/Sewer Projects	\$1-\$400,000 15%	\$400,001-up 10%
2. Drainage Improvements	\$1-\$400,000 20%	\$400,001-up 15%
3. Street Construction, new	\$1-\$250,000 20%	\$250,001-up 15%
4. Street Reconstruction	\$1-\$500,000 10%	\$500,001-up 5%
5. Building Construction, new	\$1-\$100,000 20%	\$100,001-up 5%.
6. All Others (grading, sweeping, etc.)	10%	

### Policy Application

- Field Modifications may be approved by the Development Services Department. Requests for Field Modifications must be accompanied by a written cost quote. Field Modifications costing more than 25% of the project's contingency amount must be approved by the City Manager.
- Change Orders must be approved by City Council action.
- Questions about this policy should be directed to the City Manager, the Managing Director of Financial Services, or the Managing Director of Development Services.

### E. Public Works Bonding Requirements

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**Chapter 2253 of the State of Texas Government Code states the following regarding public work performance and payment bonds:**

**§ 2253.021. PERFORMANCE AND PAYMENT BONDS REQUIRED.**

- (a) A governmental entity that makes a public work contract with a prime contractor shall require the contractor, before beginning the work, to execute to the governmental entity:
- 1) a performance bond if the contract is in excess of \$100,000; and
  - 2) a payment bond if the contract is in excess of \$50,000.
- (b) The performance bond is:
- 1) solely for the protection of the state or governmental entity awarding the public work contract;
  - 2) in the amount of the contract; and
  - 3) conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents.

- (c) The payment bond is:
  - 1) solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material; and
  - 2) in the amount of the contract.
- (d) A bond required by this section must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code).
- (e) A bond executed for a public work contract with the state or a department, board, or agency of the state must be payable to the state and its form must be approved by the attorney general. A bond executed for a public work contract with another governmental entity must be payable to and its form must be approved by the awarding governmental entity.
- (f) A bond required under this section must clearly and prominently display on the bond or on an attachment to the bond:
  - 1) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or
  - 2) the toll-free telephone number maintained by the Texas Department of Insurance under Article 1.35D, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.
- (g) A governmental entity may not require a contractor for any public building or other construction contract to obtain a surety bond from any specific insurance or surety company, agent, or broker.

**§ 2253.022. PERFORMANCE AND PAYMENT BONDS; INSURED LOSS.**

- (a) A governmental entity shall ensure that an insurance company that is fulfilling its obligation under a contract of insurance by arranging for the replacement of a loss, rather than by making a cash payment directly to the governmental entity, furnishes or has furnished by a contractor, in accordance with this chapter:
  - 1) a performance bond as described by Section 2253.021(b) for the benefit of the governmental entity; and
  - 2) a payment bond as described in Section 2253.021(c) for the benefit of the beneficiaries described by that subsection.
- (b) The bonds required to be furnished under Subsection (a) must be furnished before the contractor begins work.
- (c) It is an implied obligation under a contract of insurance for the insurance company to furnish the bonds required by this section.
- (d) To recover in a suit with respect to which the insurance company has furnished or caused to be furnished a payment bond, the only notice required of a payment bond beneficiary is the notice given to the surety in accordance with Subchapter C.

- (e) This section does not apply to a governmental entity when a surety company is complying with an obligation under a bond that had been issued for the benefit of the governmental entity.
- (f) If the payment bond required by Subsection (a) is not furnished, the governmental entity is subject to the same liability that a surety would have if the surety had issued the payment bond and the governmental entity had required the bond to be provided. To recover in a suit under this subsection, the only notice required of a payment bond beneficiary is a notice given to the governmental entity, as if the governmental entity were the surety.

**§ 2253.023. ATTEMPTED COMPLIANCE.**

- (a) A bond furnished by a prime contractor in an attempt to comply with this chapter shall be construed to comply with this chapter regarding the rights created, limitations on those rights, and remedies provided.
- (b) A provision in a bond furnished by a prime contractor in an attempt to comply with this chapter that expands or restricts a right or liability under this chapter shall be disregarded, and this chapter shall apply to that bond.

**§ 2253.024. INFORMATION FROM CONTRACTOR OR SUBCONTRACTOR.**

- (a) A prime contractor, on the written request of a person who provides public work labor or material and when required by Subsection (c), shall provide to the person:
  - 1) the name and last known address of the governmental entity with whom the prime contractor contracted for the public work;
  - 2) a copy of the payment and performance bonds for the public work, including bonds furnished by or to the prime contractor; and
  - 3) the name of the surety issuing the payment bond and the performance bond and the toll-free telephone number maintained by the Texas Department of Insurance under Article 1.35D, Insurance Code, for obtaining information concerning licensed insurance companies.
- (b) A subcontractor, on the written request of a governmental entity, the prime contractor, a surety on a bond that covers the public work contract, or a person providing work under the subcontract and when required by Subsection (c), shall provide to the person requesting the information:
  - 1) the name and last known address of each person from whom the subcontractor purchased public work labor or material, other than public work material from the subcontractor's inventory;
  - 2) the name and last known address of each person to whom the subcontractor provided public work labor or material;
  - 3) a statement of whether the subcontractor furnished a bond for the benefit of its subcontractors and material suppliers;
  - 4) the name and last known address of the surety on the bond the subcontractor furnished; and
  - 5) a copy of that bond.
- (c) Information requested shall be provided within a reasonable time but not later than the 10th day after the receipt of the written request for the information.

- (d) A person from whom information is requested may require payment of the actual cost, not to exceed \$25, for providing the requested information if the person does not have a direct contractual relationship with the person requesting information that relates to the public work.
- (e) A person who fails to provide information required by this section is liable to the requesting person for that person's reasonable and necessary costs incurred in getting the requested information.

**§ 2253.025. INFORMATION FROM PAYMENT BOND BENEFICIARY.**

- (a) A payment bond beneficiary, not later than the 30th day after the date the beneficiary receives a written request from the prime contractor or a surety on a bond on which a claim is made, shall provide to the contractor or surety:
  - 1) a copy of any applicable written agreement or purchase order; and
  - 2) any statement or payment request of the beneficiary that shows the amount claimed and the work performed by the beneficiary for which the claim is made.
- (b) If requested, the payment bond beneficiary shall provide the estimated amount due for each calendar month in which the beneficiary performed public work labor or provided public work material.

**§ 2253.026. COPY OF PAYMENT BOND AND CONTRACT.**

- (a) A governmental entity shall furnish the information required by Subsection (d) to any person who applies for the information and who submits an affidavit that the person:
  - 1) has supplied public work labor or material for which the person has not been paid;
  - 2) has contracted for specially fabricated material for which the person has not been paid; or
  - 3) is being sued on a payment bond.
- (b) The copy of the payment bond or public work contract is prima facie evidence of the content, execution, and delivery of the original.
- (c) An applicant under this section shall pay any reasonable fee set by the governmental entity for the actual cost of preparation of the copies.
- (d) A governmental entity shall furnish the following information to a person who makes a request under Subsection (a):
  - 1) a certified copy of a payment bond and any attachment to the bond;
  - 2) the public work contract for which the bond was given; and
  - 3) the toll-free telephone number maintained by the Texas Department of Insurance under Article 1.35D, Insurance Code, for obtaining information concerning licensed insurance companies.

**§ 2253.027. LIABILITY OF GOVERNMENTAL ENTITY.**

- (a) If a governmental entity fails to obtain from a prime contractor a payment bond as required by Section 2253.021:
- 1) the entity is subject to the same liability that a surety would have if the surety had issued a payment bond and if the entity had obtained the bond; and
  - 2) a payment bond beneficiary is entitled to a lien on money due to the prime contractor in the same manner and to the same extent as if the public work contract were subject to Subchapter J, Chapter 53, Property Code.
- (b) To recover in a suit under Subsection (a), the only notice a payment bond beneficiary is required to provide to the governmental entity is a notice provided in the same manner as described by Subchapter C. The notice must be provided as if the governmental entity were a surety.

**F. Notice Requirements**

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**§ 2253.041. NOTICE REQUIRED FOR CLAIM FOR PAYMENT FOR LABOR OR MATERIAL.**

- (a) To recover in a suit under Section 2253.073 on a payment bond for a claim for payment for public work labor performed or public work material delivered, a payment bond beneficiary must mail to the prime contractor and the surety written notice of the claim.
- (b) The notice must be mailed on or before the 15th day of the third month after each month in which any of the claimed labor was performed or any of the claimed material was delivered.
- (c) The notice must be accompanied by a sworn statement of account that states in substance:
- 1) the amount claimed is just and correct; and
  - 2) all just and lawful offsets, payments, and credits known to the affiant have been allowed.
- (d) The statement of account shall include the amount of any retainage applicable to the account that has not become due under the terms of the public work contract between the payment bond beneficiary and the prime contractor or between the payment bond beneficiary and a subcontractor.

**§ 2253.042. COPY OF AGREEMENT AS NOTICE OF CLAIM FOR UNPAID LABOR OR MATERIAL.**

A payment bond beneficiary has the option to enclose with the sworn statement of account, as the notice for a claim under a written agreement for payment for public work labor performed or public work material delivered a copy of the written agreement and a statement of the completion or the value of partial completion of the agreement.

**§ 2253.043. NOTICE OF CLAIM FOR UNPAID LABOR OR MATERIAL WHEN WRITTEN AGREEMENT DOES NOT EXIST.**

(a) Except as provided by Section 2253.044, if a written agreement does not exist between the payment bond beneficiary and the prime contractor or between the payment bond beneficiary and the subcontractor, the notice for a claim for unpaid bills must contain:

- 1) the name of the party for whom the public work labor was performed or to whom the public work material was delivered;
- 2) the approximate date of performance or delivery;
- 3) a description of the public work labor or material for reasonable identification; and
- 4) the amount due.

(b) The payment bond beneficiary must generally itemize the claim and include with it copies of documents, invoices, or orders that reasonably identify:

- 1) the public work labor performed or public work material delivered for which the claim is made;
- 2) the job; and
- 3) the destination of delivery.

**§ 2253.044. NOTICE OF CLAIM FOR MULTIPLE ITEMS OF LABOR OR MATERIAL.**

The notice for a claim for lump-sum payment for multiple items of public work labor or material must:

- (1) describe the labor or material in a manner that reasonably identifies the labor or material;
- (2) state the name of the party for whom the labor was performed or to whom the material was delivered;
- (3) state the approximate date of performance or delivery;
- (4) state whether the contract is written or oral;
- (5) state the amount of the contract; and
- (6) state the amount claimed.

**§ 2253.045. NOTICE OF CLAIM FOR UNPAID LABOR OR MATERIAL UNDER WRITTEN UNIT PRICE AGREEMENT.**

The notice for a claim for public work labor performed or public work material delivered by a payment bond beneficiary who is a subcontractor or material man to the prime contractor or to a subcontractor and who has a written unit price agreement that is wholly or partially completed is sufficient if the beneficiary attaches to the sworn statement of account:

- (1) a list of units and unit prices set by the contract; and
- (2) a statement of those completed and partially completed units.

**§ 2253.046. NOTICE REQUIRED FOR CLAIM FOR PAYMENT OF RETAINAGE.**

(a) To recover in a suit under Section 2253.073 on a payment bond for a claim for payment of retainage, a payment bond beneficiary whose contract with a prime contractor or subcontractor provides for retainage must mail written notice of the claim to the prime contractor and the surety on or before the 90th day after the date of final completion of the public work contract.

(b) The notice shall consist of a statement of:

- (1) the amount of the contract;
- (2) any amount paid; and
- (3) the outstanding balance.

(c) Notice of a claim for payment of retainage is not required if the amount claimed is part of a prior claim made under this subchapter.

**§ 2253.047. ADDITIONAL NOTICE REQUIRED FOR PAYMENT BOND BENEFICIARY WITHOUT DIRECT CONTRACTUAL RELATIONSHIP WITH PRIME CONTRACTOR.**

(a) To recover in a suit under Section 2253.073 on a payment bond, a payment bond beneficiary who does not have a direct contractual relationship with the prime contractor for public work labor or material must mail notice as required by this section.

(b) A payment bond beneficiary who contracts with a subcontractor for retainage must mail, on or before the 15th day of the second month after the date of the beginning of the delivery of public work material or the performance of public work labor, written notice to the prime contractor that:

- (1) the contract provides for retainage; and
- (2) generally indicates the nature of the retainage.

(c) The payment bond beneficiary must mail to the prime contractor written notice of a claim for any unpaid public work labor performed or public work material delivered. The notice must be mailed on or before the 15th day of the second month after each month in which the labor was performed or the material was delivered. A copy of the statement sent to a subcontractor is sufficient as notice under this subsection.

(d) The payment bond beneficiary must mail to the prime contractor, on or before the 15th day of the second month after the receipt and acceptance of an order for specially fabricated material, written notice that the order has been received and accepted.

(e) This section applies only to a payment bond beneficiary who is not an individual mechanic or laborer and who makes a claim for wages.

**§ 2253.048. MAILING NOTICE**

(a) A notice required by this subchapter to be mailed must be sent by certified or registered mail.

(b) A notice required by this subchapter to be mailed to a prime contractor must be addressed to the prime contractor at the contractor's residence or last known business address.

(c) A person satisfies the requirements of this subchapter relating to providing notice to the surety if the person mails the notice by certified or registered mail to the surety:

- (1) at the address stated on the bond or on an attachment to the bond;
- (2) at the address on file with the Texas Department of Insurance; or
- (3) at any other address allowed by law.

## **G. Claims on Bonds; Enforcement**

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### **§ 2253.071. TERMINATION OR ABANDONMENT OF CONTRACT; PROCEEDS OF CONTRACT.**

- (a) The proceeds of a public work contract are not payable, until all costs of completion of the contract work are paid by the contractor or the contractor's surety, to a contractor who furnishes a bond required by this chapter if:
  - (1) the contractor abandons performance of the contract; or
  - (2) the contractor's right to proceed with performance of the contract is lawfully terminated by the awarding governmental entity because of the contractor's default.
- (b) The balance of the public work contract proceeds remaining after the costs of completion are paid shall be paid according to the contractor's and the surety's interests as may be established by agreement or by judgment of a court.
- (c) A surety that completes a public work contract or incurs a loss under a performance bond required under this chapter has a claim to the proceeds of the contract prior to all other creditors of the prime contractor to the full extent of the surety's loss. That priority does not excuse the surety from paying an obligation under a payment bond.

### **§ 2253.072. CITY NOT LIABLE FOR COSTS**

The city is not liable for payment of a cost or expense of a suit brought by any party on a payment bond furnished under this chapter.

### **§ 2253.073. SUIT ON PAYMENT BOND**

- (a) A payment bond beneficiary who has provided public work labor or material under a public work contract for which a payment bond is furnished under this chapter may sue the principal or surety, jointly or severally, on the payment bond if the claim is not paid before the 61st day after the date the notice for the claim is mailed.
- (b) Suit may be brought under Subsection (a) for:
  - (1) the unpaid balance of the beneficiary's claim at the time the claim was mailed or the suit is brought; and
  - (2) reasonable attorney fees.

### **§ 2253.074. COSTS AND ATTORNEY FEES**

A court may award costs and reasonable attorney fees that are equitable in a proceeding to enforce a claim on a payment bond or to declare that any part of a claim is invalid.

### **§ 2253.075. ASSIGNMENT OF CLAIM**

A third party to whom a claim is assigned is in the same position as a payment bond beneficiary if notice is given as required by this chapter.

**§ 2253.076. LIMITATIONS ON CERTAIN CLAIMS; MAXIMUM RETAINAGE**

- (a) The amount of a subcontractor's claim, including previous payments, may not exceed the proportion of the subcontract price that the work done bears to the total of the work covered by the subcontract.
- (b) A claim for specially fabricated material that has not been delivered or incorporated into the public work is limited to material that conforms to and complies with the plans, specifications, and contract documents for the material. The amount of the claim may not exceed the reasonable cost, less the fair salvage value, of the specially fabricated material.
- (c) A claim for retainage in a notice under this subchapter is not valid for an amount greater than the amount of retainage specified in the public work contract between the payment bond beneficiary and the prime contractor or between the payment bond beneficiary and the subcontractor. A claim for retainage is never valid for an amount greater than 10 percent of the amount of that contract.

**§ 2253.077. VENUE**

A suit under this chapter shall be brought in a court in a county in which any part of the public work is located.

**§ 2253.078. STATUTE OF LIMITATIONS**

- (a) A suit on a performance bond may not be brought after the first anniversary of the date of final completion, abandonment, or termination of the public work contract.
- (b) A suit on a payment bond may not be brought by a payment bond beneficiary after the first anniversary of the date notice for a claim is mailed under this chapter.

**§ 2253.079. CRIMINAL OFFENSE FOR FALSE AND FRAUDULENT CLAIM.**

- (a) A person commits an offense if the person willfully files a false and fraudulent claim under this chapter.
- (b) An offense under this section is subject to the penalty for false swearing.

**ATTACHMENT A**

**SOLE/SINGLE SOURCE FORM**

**SOLE SOURCE:** Items available from only one source because of patents, copyrights, secret processes or natural monopolies. **A single source** is available from more than one vendor but has a justifiable reason to purchase from that single source.

**Department:** \_\_\_\_\_

**Vendor:** \_\_\_\_\_

**Services/Equipment:** \_\_\_\_\_

**Dollar Amount \$** \_\_\_\_\_

**Date:** \_\_\_\_\_

The vendor/equipment/services stated above must be purchased as a SOLE SOURCE/SINGLE SOURCE purchase as defined by the local government code for the following reasons: (circle one)

- 1. Patents
- 2. Copyrights
- 3. Secret Processes
- 4. Natural Monopolies
- 5. Unique Expertise: \_\_\_\_\_
- 6. Unique Experience: \_\_\_\_\_
- 7. Other: \_\_\_\_\_

**Approvals:**

**Name:** \_\_\_\_\_ **Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
Requestor

**Name:** \_\_\_\_\_ **Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
Managing Director

*If expenditures are over \$10,000, the City Manager must also sign:*

\_\_\_\_\_ **Date:** \_\_\_\_\_  
City Manager

**ATTACHMENT B**

**CITY OF DESOTO**

**CERTIFICATION OF EMERGENCY PURCHASE FORM**

Section 252.022 of the Texas statutes provides exemptions to the bidding laws for emergencies as follows:

- (A)(1).** A procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality.
- (A)(2).** A procurement necessary to preserve or protect the public health or safety of the municipality's residents.
- (A)(3).** A procurement necessary because of unforeseen damage to public machinery, equipment or other property.

***Complete the section below and forward to Purchasing Division no later than next business day.***

Purchase involved was necessary because of (A)(1)  (A)(2)  (A)(3)  (***indicate one by placing an 'X' in the box***)

Description/Justification of Emergency:

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Emergency Dollar Amount: \$ \_\_\_\_\_

\_\_\_\_\_  
Name/Title of official responsible for initiating emergency action.

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Signature of Managing Director:  
Required for any dollar amount

\_\_\_\_\_  
Date

**Purchasing Use Only**

Date Received: \_\_\_\_\_

PO Number: \_\_\_\_\_

Director/Buyer Signature: \_\_\_\_\_